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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,091	03/30/2004	Gerald J. Lozinski	Mrcofe-2-4277	7301

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EXAMINER
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HARMON, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/814,091	<b>Applicant(s)</b> LOZINSKI ET AL.	
	<b>Examiner</b> Christopher R. Harmon	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-12, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/30/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-3, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "yet low enough to avoid overpacking" (claim 2, line 4) is indefinite.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 7-10, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Coates (US 5,941,055).

Coates discloses a portable appliance for the manufacture of a beverage infusion pod comprising mold 30 having a depression rimmed about with a mold sealing surface 37; axially movable form 50 (relative to the mold) further comprising bolt 52 and integral bolt carrier 51; bolt carrier sealing surface 58 is in substantial conformity with the mold sealing surface 37 (the two are juxtaposed while the bolt is brought into the depression); see figures 12-14. Regarding claims 7-8, the filter material acted upon does not further limit the apparatus and the apparatus is fully capable of performing the intended

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operation on both woven thermoplastics and paper. Regarding claim 10, the apparatus of Coates is considered "adapted to operate on a kitchen countertop". The beverage infusion pod of Coates is made from materials in a pressing/packing/sealing operation and is considered to anticipate the product by process claim 15.

5. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Rehman (US 5,012,629).

The beverage infusion pod of Rehman is made from materials in a pressing/packing/sealing operation and is considered to anticipate the product by process claim 15; see all figures.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-6 and 11-12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coates (US 5,941,055) in view of Short (US 5,419,245).

Coates discloses providing a form and mold (see above) for manufacturing an infusion pod. The filter material 51 is positioned on and thereafter depressed into the mold 30 by the bolt 52 during a cupping operation. After dispensing an infusible product the cup is then simultaneously packed and sealed by second filter material/insert 65; see column 7, lines 4-10. Coates discloses spring/resilient member 14 mounted upon the mold not the form, for controlling the pressure applied in the operation. The resilient

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member 14 is not mounted to the bolt or biasing the bolt outwardly from the bolt carrier, however Short teaches the concept of using a bolt carrier which has resilient biasing spring members to bias the pressing surface. Short shows bolt means slideably mounted in a bolt carrier channel as shown in figure 3. Short also discloses that the springs cause the press plate to continue to be forced downward by the biasing nature of the compressed springs 63 and that the springs have particular spring rates. Short shows the forming press being manually axially moveable relative to the mold via crank handle 73. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the biasing spring pressing means of Short in the invention to Coats for controlling the pressure applied between the mold and form/bolt configuration.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Note also, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language such as "adapted to" that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.


Regarding claim 15, "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Chris Harmon  
Patent Examiner